

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MACKENZIE YOUNG,

Plaintiff,

vs.

**BARLOW TRUCK LINES, INC.,
GEORGE E. HESS, and
CHEROKEE INSURANCE
COMPANY,**

Defendants.

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CIVIL ACTION FILE

NO.: _____

DEFENDANTS' JOINT NOTICE OF REMOVAL

COME NOW **BARLOW TRUCK LINES, INC., GEORGE E. HESS,** and **CHEROKEE INSURANCE COMPANY**, purported Defendants (“Defendants”) in the above-styled civil action, appearing specially and without waiving, but specifically reserving all defenses arising from jurisdiction, service and process, and **MIC GENERAL INSURANCE COMPANY**, served as Plaintiff’s purported uninsured motorist carrier pursuant to O.C.G.A. § 33-7-11, and hereby remove Civil Action File No. 2022CV00089 from the State Court of Clayton County to the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to Fed. R. Civ. P. 81(c) and 28 U.S.C. §§ 1332, 1441 and 1446, and as grounds for their removal state as follows:

STATEMENT OF THE CASE

1.

Defendants have been sued in a civil action brought in the State Court of Clayton County, which is located within the Atlanta Division of the United States District Court for the Northern District of Georgia. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all of the process, pleadings, orders and documents from the State Court Action have been attached as Defendants' Exhibit 1 (hereinafter "D-1").

2.

The present matter is an action for personal injury stemming from an October 22, 2019 motor vehicle accident involving Plaintiff and Defendant George E. Hess (hereinafter "the subject accident"). D-1, Complaint, ¶¶ 5-6. Plaintiff makes claims against Defendant George E. Hess for (i) ordinary negligence and (ii) negligence per se. D-1, Complaint, ¶¶ 8-11. Plaintiff makes a claim against Defendant Barlow Truck Lines, Inc. for vicarious liability. *Id.* Plaintiff makes a claim against Defendant Cherokee Insurance Company for direct action pursuant to O.C.G.A. § 40-2-140. D-1, Complaint, ¶¶ 14-15. Plaintiff has also served MIC General Insurance Company as a purported uninsured/underinsured motorist carrier pursuant to O.C.G.A. § 33-7-11.

3.

The Complaint was filed on January 12, 2022, in the State Court of Clayton County, Civil Action File No. 2022CV00089. *See* D-1, Complaint. Defendant Barlow Truck Lines, Inc., has not yet been served. Defendant Cherokee Insurance Company was purportedly served on or about February 15, 2022. Defendant George E. Hess was purportedly served between January 20, 2022, and February 2, 2022¹. MIC General Insurance Company was served on January 20, 2022.

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)

4.

Plaintiff is a citizen of the State of Georgia. *See* Georgia Motor Vehicle Crash Report attached hereto as Defendants' Exhibit 2. Defendant Barlow Truck Lines is, and was at the time this lawsuit was filed, a corporation organized under the laws of the State of Missouri, with its principal place of business in the State of Missouri. D-1, Complaint, ¶ 1. Defendant George E. Hess is a citizen of the State of Missouri. D-1, Complaint, ¶ 2. Defendant Cherokee Insurance Company is, and was at the time this lawsuit was filed, a corporation organized under the laws of the State of Michigan, with its principal place of business in the State of

¹ Plaintiff filed a Sheriff's Entry of Service on February 2, 2022. The Entry of Service reflects it to have been received by the Sheriff's Office on January 20 2022, but does not reflect the date upon which Defendant George E. Hess was purportedly served. As Defendant Barlow Truck Lines, Inc., has not yet been served, and as Defendant Cherokee Insurance Company was only recently served, this does not affect Defendants' timeline to remove this matter pursuant to 28 U.S.C. § 1446(b).

Michigan. D-1, Complaint, ¶ 3. MIC General Insurance Company is, and was at the time this lawsuit was filed, a corporation organized under the laws of the State of Michigan, with its principal place of business in the State of North Carolina. Therefore, there is complete diversity of citizenship between the parties.

5.

Plaintiff's Complaint alleges that "[a]s a direct result of said negligence and gross negligence on the part of said Defendants, Plaintiff incurred damages of medical expenses, lost wages, and extensive physical pain and mental anguish." D-1, Complaint, ¶ 10. Plaintiff further contends that she "has needed medical treatment due to these injuries and will continue to need treatment in the future," and includes a partial list of her past treatment and medical special damages totaling \$234,394.42. *Id.*, Complaint, ¶ 11.

6.

In determining whether the requisite \$75,000.00 amount in controversy has been established, jurisdiction "is proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement." *Williams v. Best Buy Co., Inc.*, 269 F.3d 1319 (11th Cir. 2001). If the jurisdictional amount is not facially apparent from the complaint, the court ... may require evidence relevant to the amount in controversy." *Id.* In the present case, given the damages

claimed by Plaintiff, Defendants assert that it is facially apparent from Plaintiff's Complaint that the requisite \$75,000.00 amount in controversy requirement has been met.

**ALL PROCEDURAL REQUIREMENTS
FOR REMOVAL HAVE BEEN SATISFIED**

7.

As Defendant Barlow Truck Lines, Inc., has not yet been served, and as Defendant Cherokee Insurance Company was only recently purportedly served, this Joint Notice of Removal is filed within 30 days from the date that either Defendant Barlow Truck Lines, Inc., or Defendant Cherokee Insurance Company were served. Removal is, therefore, timely in accordance with 28 U.S.C. § 1446(b).

8.

Pursuant to 28 U.S.C. § 1446(b)(2)(A), "all defendants who have been properly joined and served must join in or consent to the removal of the action." Defendants Barlow Truck Lines, Inc., Cherokee Insurance Company, George E. Hess, and MIC General Insurance Company expressly consent to the removal of this action, and the requirements of 28 U.S.C. § 1446(b)(2)(A) have been met.

CONCLUSION

By this Notice of Removal, Defendants do not waive any objections as to service, jurisdiction or venue, or any other defenses or objections they may have to this action. Defendants intend no admission of fact, law or liability by this Notice and expressly reserve all defenses, motions and/or pleas.

WHEREFORE, Defendants Barlow Truck Lines, Inc., George E. Hess, Cherokee Insurance Company and MIC General Insurance Company pray that the case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 16th day of February, 2022.

**CRUSER, MITCHELL, NOVITZ,
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[Signed With Express Permission]

*Attorney for MIC General Insurance
Company*

CERTIFICATE OF COMPLIANCE

Undersigned counsel certify the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Rule 5.1(C).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned has this day electronically filed the within and foregoing **DEFENDANTS' JOINT NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 16th day of February, 2022.

**CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON & ZIMET, LLP**



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